IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1644 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD MASKATI CLOTH DEALERS CO-OP. SHOPS WAREHOUSE SOC.LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1644 of 1993

MR C G GOVINDAN for AK CLERK for Petitioner No. 1

MR L B DABHI AGP for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. The petitioner Society has preferred this petition in order to quash and set aside the order dated 13/07/1992, passed by respondent no.2 herein, at Annexure-D to the petition, whereby the bye-laws of the petitioner Society were directed to be amended.

2. The petitioner is a Cooperative Society registered under the provisions of the Gujarat Cooperative Societies Act, 1961 (for short, "the Act"). The petitioner Society received order dated 13/07/1992 from the District Registrar, respondent no.2 herein, whereby it was directed to charge certain amount of premium on the transfer of plots / buildings as per the bye-laws annexed with the said order. Feeling aggrieved by the said action of the respondent authority the petitioner Society has preferred this petition before this Court.

3. On 07/04/1993 this Court had granted interim relief in terms of para 10-(A) of the petition by which the operation of the impugned order dated 13/07/1992 was suspended. In spite of the said order, even after 12 years, no reply has been filed by the respondents. Mr.L B Dabhi learned AGP states that in spite of two reminders dated 23/11/2004 and 10/12/2004, the concerned Officers of the respondent authorities have not turned up to file their replies. Hence, this Court had no other option, but, to proceed with the matter on merits.

4. Mr.C G Govindan for Mr.A K Clerk for the petitioner Society has submitted that the respondent authorities had accepted all the contentions raised by the petitioner Society vide letter dated 06/04/1988 and had, thereafter, approved the amendment of the bye-laws carried out by the petitioner Society in its General Meeting. He has, therefore, contended that it was not open to the respondent authorities to insist upon the amendment to be carried out by the petitioner Society in its bye-laws as per the order dated 13/07/1992 issued to the petitioner Society.

5. Mr.Govindan has placed reliance on the decision of this Court rendered in Special Civil Application No.6706 of 1991 and group decided on 19/08/2002. He has submitted that the aforesaid issue is squarely covered by the decision rendered in the aforesaid Special Civil Application.

6. I have heard learned counsel for the parties and have perused the documents on record. Section 14 of the Act provides that an opportunity of hearing is required to be given before passing the final order directing the registration of the amendment in the bye-laws. In the present case, the respondent authority had itself by letter dated 06/04/1988 approved the amendment of the bye-laws of the petitioner Society. Hence, it is clear that the respondent authorities had full knowledge of the

extent, resolutions, questions etc. as regards the granting of approval to the amended bye-laws.

7. Therefore, it was not open to the respondent authorities, at a belated stage, to insist upon the amendment to be carried out by the petitioner Society in its bye-laws as per the order dated 13/07/1992 issued to the petitioner Society. Hence, I am of the opinion that the impugned order passed by the respondent authority is illegal and is required to be quashed and set aside.

8. Hence, the respondent authority is directed to consider the matter afresh under Section 14(1) of the said Act when the Society concerned is called upon to amend the bye-laws as per the letter dated 13/07/1992, and thereafter, if the petitioner Society declines or fails to carry out the amendment in the bye-laws, it would be open to the respondent authority to consider the matter as per Section 14(2) of the Act keeping in mind the aforesaid observations made by this Court. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(K. S. Jhaveri, J.)

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